IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 283 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME TAX

Versus

KABIR KIRTI MANDIR

Appearance:

1. INCOME TAX REFERENCE No. 283 of 1993
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred for the opinion of this

Court:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the donation of Rs.4 lakhs received by the assessee towards "Kayami Fund" did not constitute income of the assessee ?"

2. The assessee is a Public Charitable Trust. The assessment year involved is 1986-87 for which accounting year was S.Y. 2041. During the relevant accounting year the assessee received Rs. 4 lakhs on 1.7.1985 as donation from Sadguru Shree Shanti Bhandrara Samiti, Jamnagar. In the receipt that was issued by the assessee, it was mentioned that the said amount had been received for being deposited by the assessee in "Kayami Fund". The said amount was credited by the assessee in "Kayami Fund" and was taken to balance sheet. The Income-tax Officer observed that the said amount had been received for construction of building and hence the said amount should be treated as income of the assessee-trust. The Income-tax Officer accordingly treated the said amount as income of the assessee-trust.

3. The assessee filed appeal before the Deputy Commissioner of Income-tax (Appeals) and submitted that "Kayami Fund" was the corpus of the trust. It was submitted that the word "Kayami" meant permanent and hence donation had been received towards corpus of the trust. It was pointed out that "Kayami trust Fund" was kept by the assessee in fact and was invested in Fixed Deposits with Central Bank of India. The Deputy Commissioner of Income-tax (Appeals) accepted the submissions of the assessee on the basis of decision of Delhi Bench of the Tribunal in the case of Dharmapratisthanam vs. ITO. He accordingly held that the donation of Rs.4 lakhs received by the assessee trust did not constitute income of the assessee.

4. The department come in appeal before the Tribunal. The Tribunal relied on the decision in the case of Swetember Murtipujak Tapogachha Jain Sangh and rejected the ground raised by the department.

5. On the above facts, at the instance of the revenue the above question is referred to us for our opinion.

6. Heard Mr Manish R Bhatt, the learned senior standing counsel appearing for the applicant-revenue. No one appears on behalf of the respondent-assessee though

the notice is duly served.

7. The issue involved in the present reference is squarely covered by our decision in the case of Commissioner of Income-tax, Rajkot vs. Shri Sthanakvasi Vardhman Vanik Jain Sangh, Jamjodhpur being Income-tax Reference No. 73 of 1993 which was decided by us today. For the reasons stated therein and the view taken by us therein, we are of the view that the Tribunal was right in holding that the donation of Rs. 4 lakhs received by the assessee towards "Kayami Fund" did not constitute income of the assessee. We, therefore, answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

8. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-